

terstate commerce and over 150 years there have been 250 decisions defining that because, as the country grew, we changed.

I cannot tell you that there will never be a decision because 50 years from now as a result of computers and a totally new kind of civilization, somebody is going to think of something that I never dreamed of, even in a nightmare.

THE CHAIRMAN: Delegate Kosakowski.

DELEGATE KOSAKOWSKI: Delegate Sherbow, to pursue Delegate Gleason's remarks in reference to the definition of a lottery, I know you are a learned lawyer, a very good judge, you have had a lot of experience in this matter.

When the case goes before the Court of Appeals, do these judges define words by looking the words up in the dictionary? Do they define words from past experiences in an area? How do they arrive at defining something? What process do they take? Being a layman, I do not understand that. Maybe you could explain this to me.

DELEGATE SHERBOW: What happens, Delegate Kosakowski, is this. When you are dealing with something like lottery, you give it its general meaning. When somebody comes up with something that is a little different and you now have to face another set of facts, then you go back and you look at the history of the entire subject. Then you go further and you go to the debates either in the legislature or in Congress or before the Constitutional Convention. You want to find out what did those people think it meant? You look for the contemporaneous construction. Then out of all of this distillation of arguments on all sides, if it becomes necessary to define the particular matter, the courts will define them.

If they feel that all they have to do is to decide whether what is before them comes within it or not, they may say we rule that this is or is not within this statute. We go no further.

They do not have to decide a whole lot more than just the simple issue of the case before them.

THE CHAIRMAN: Delegate Kosakowski.

DELEGATE KOSAKOWSKI: Delegate Sherbow, did your Committee get the dictionary and look at the definition of a lottery?

DELEGATE SHERBOW: We are dealing with a legal definition. You are going

to find out later in reading as we will of some pages dealing with the matters relating to taxation, that words have special meaning. They are words of art. They deal with a special subject. They have acquired this particular meaning. The lottery, as we understand it, has acquired these meanings.

There is another statement in the law which says if you allow something to go on for a long time and people have accepted that particular definition, you have to give considerable weight to it.

THE CHAIRMAN: Delegate Kosakowski.

DELEGATE KOSAKOWSKI: Delegate Sherbow, going back to a statement you made relating to horse racing compared to lotteries, did you make the statement that horse racing and lottery were controlled by the State of Maryland?

DELEGATE SHERBOW: No, I said not that lottery was controlled, I said lottery was banned by the State of Maryland, but that horse racing insofar as pari-mutuel betting is concerned is under the control of the State of Maryland and is not construed as a lottery. They could not operate if it was construed as a lottery.

THE CHAIRMAN: Delegate Kosakowski.

DELEGATE KOSAKOWSKI: If the ban on lottery were taken out of the constitution and the State of Maryland approved the lottery, do you think with a state-operated lottery, the racketeers would muscle in?

DELEGATE SHERBOW: I do not think there is the slightest doubt of it, I think they would muscle in, and I would be willing to predict almost the period of time it would take them to come it. It would be less than ten years.

THE CHAIRMAN: Delegate Weidemyer.

DELEGATE WEIDEMEYER: Mr. Chairman, I notice that in your report it dwelt at considerable length on the fact that lotteries were bad and should be banned because, as you have indicated by your talk here today and also by the report, that it meant paying in some money on the theory of getting a large return or something for nothing.

I am wondering with that in mind did your Committee give any special thought to jai alai? Did it give any special thought to dog racing? Or bookmaking or pinball machines that pay off or horse race betting or off track betting or free play machines